

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3245 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PK SHAH

Versus

STATE OF GUJARAT

Appearance:

MR VJ DESAI for Petitioner

SMT SIDDHI TALATI for Respondent No. 1, 2

MR SR BRAHMBHATT for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/07/97

ORAL JUDGMENT

#. The learned counsel for the petitioner submits that by passing of time this Special Civil Application, in substance, has become infructuous. The learned counsel for respondents are not controverting this fact.

#. The facts of the case are that the petitioner herein,

a medical officer, working in the Health and Family Welfare Department of Government of Gujarat was ordered to be transferred from Palanpur Civil Hospital to Chhapi, Banaskantha District under the order of respondent No.1. The respondent No.3, who was posted at Chhapi was transferred to Cambay under the same order. Being aggrieved by such transfer, the respondent No.3 herein had filed Special Civil Application No.4189 of 1984 which was rejected by order dated 12th March 1985 but the respondent No.3 was given time to continue at Chhapi till 30th April 1985. The petitioner submitted that respondent No.2, who had no authority to cancel the transfer order, by his order dated 28th May 1985, annexure 'F', directed respondent No.3 to resume at Chhapi as Medical Officer. The petitioner's grievance is that the transfer order dated 8.8.84 is still in force and hence this petition.

#. In this Special Civil Application, on 28th June 1985, this Court has been pleased to grant interim relief in favour of petitioner in terms of para-12(B) of the Special Civil Application. Para-12(B) of the Special Civil Application reads as under:

Pending hearing and final disposal of this petition, this Hon'ble High Court be pleased to issue appropriate order and injunction against the operation of order Exhibit 'F' dated 29th May 1985 by respondent No.2 and direct the respondents Nos.2 and 3 to implement the said order and direct the respondent No.3 not to take the charge as Medical Officer, Chhapi, and allow the petitioner to work as Medical Officer at Chhapi.

#. So the order of respondent No.2 dated 29th May 1985 was not given effect to for all these years and the petitioner is continuing to work at the transferred place for all these years. Where for about twelve years, the petitioner is working at transferred place and further the order of his transfer may not have been given effect to, may be because of interim relief granted by this Court, this writ petition in substance does not survive and it has become infructuous. In fact, in such matters, after grant of interim relief, nothing substantial survives thereafter. This Special Civil Application in fact stood disposed of at that very stage. One more aspect is to be taken note of. The petitioner's services are transferable and otherwise also after a reasonable time he could have been transferred from Chhapi, but because of interim relief granted by this Court, the

possibility cannot be overlooked that nobody would have touched him and he would have continued to work at Chhapi. Be that as it may, now I do not consider it to be appropriate, on the basis of the impugned order, to allow the respondents to transfer the petitioner.

#. Interest of justice will be met in case this Special Civil Application is disposed of in terms that the order annexure 'F' dated 29th may 1985 may not be given effect to. However, it shall be open for respondent No.1 to transfer the petitioner at any other place as per law, and if administrative exigency so require. The Special Civil Application and Rule therein stand disposed of in aforesaid terms with no order as to costs.

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(sbl)